IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 822 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHENDRAKUMAR INDRASINHJI PVT LTD. THRO.DIRECTOR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 822 of 2004

MR PS CHAMPANERI for

Mr.B.D.Desai, Asst.GOVERNMENT PLEADER for Respondent No. 1-2,4-5

NOTICE SERVED for Respondent No. 1-5

MR KM PATEL for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 24/08/2004

ORAL JUDGEMENT

Rule. Mr.B.D.Desai, Ld.AGP appears and waives service of rule on behalf of respondent Nos 1,2,4 & 5 and Mr.Patel appears and waives service of rule on behalf of respondent No.3. With the consent of parties, matter is take up for final hearing today.

2. The only aspect which is required to be considered in this petition is that while exercising power under section 112 of Gujarat Cooperative Societies Act, 1961 (hereinafter referred to as "the Act") whether reasons are required to be recorded or not and the scope and ambit of power under section 112 of the Act.

3. There is no dispute on the point that the petitioner has filed Civil Suit No.2467/00 before the City Civil Court, Ahmedabad. It is also the case of the respondent No.3 that it has also filed suit being Civil Suit No.208/01 for recovery of amount of Rs.3,14,00,000/which is pending before the court of Civil Judge (SD), Bharuch. There is also no dispute on the point that pending the civil suit which is preferred by the petitioner herein, the respondent No.3 society is ordered to be liquidated as per order, dated 19.4.01 passed by the respondent No.5. It is the case of the petitioner that since the society is ordered to be liquidated against whom the suit is filed by the petitioner, the leave is required to be obtained from the competent authority for proceeding with the suit. The application was made by the petitioner on 4.9.02. However, the same has been rejected by the impugned order, dated 6.6.03 copy whereof is produced at annexure "D" and under these circumstances the petitioner has approached this court.

Section 112 of the Act reads as under:

"Save as expressly provided in this Act, no Civil Court shall take cognizance of any matter connected with the winding up or dissolution of a society under this Act, and when a winding up order has been made no suit or other legal proceedings lie or to be proceeded with against the society or the liquidator, except by leave of the Registrar, and subject to such terms as he may impose

Provided that, where the winding up order is cancelled, the provisions of this section shall cease to operate so far as the liability of the society and of the members thereof, to be sued is

concerned, but they shall continue to apply to the person who acted as liquidator."

There is bar operating for the civil court in the proceedings of the suit against the society in case the society is ordered to be liquidated. In the present case, we are not concerned with the matter where the suit is to be filed after liquidation. As it is an admitted position that suit was filed by the petitioner prior to order of liquidation, the petitioner was required to obtain the leave of the Registrar for proceeding with the suit. The powers of the Registrar under section 112 of the Act while considering the matter to grant leave to proceed with the suit or to institute the suit are that of quasi judicial authority because the granting of leave or refusal of leave is to result into adverse consequence to either side, may be plaintiff or defendant, as the case may be. While exercising the power under section 112 of the Act the Registrar has to largely consider the issue as to whether the suit is filed prior to liquidation and the proceedings of the suit is not going to result into serious prejudice to the proceedings of liquidation or that the liquidator can properly represent the society in the said proceedings. The other relevant circumstances as may be known to law may also be required to be considered by the Registrar , but the powers of the Registrar are more or less at par with the company Court granting leave to institute or to proceed with the proceedings against the company in liquidation. If the impugned order is considered, no reasons whatsoever are are mentioned by the Registrar for refusing to grant leave. Unless reasons are recorded it may not be possible for the higher forum for properly undertake judicial scrutiny of the order by considering the grounds which have weighed with the Registrar for refusing to grant permission. However, reasons are required to be recorded even for observance of principles of natural justice, more particularly, when the authority has to exercise power as a quasi judicial authority. As no reasons, whatsoever, are mentioned, the impugned order passed by the authority can not be sustained in the eye of law and deserves to be quashed and set aside.

4. In view of the above, the impugned order, dated 6.6.03 passed by the respondent No.5 is quashed and set aside with further direction that the respondent No.5 shall give opportunity of hearing and shall pass appropriate order after recording the reasons as to whether the leave should be granted to the petitioner for

proceeding with the suit or not and while considering the said aspects the observations made by this court hereinabove shall also be taken into consideration for deciding the application of the petitioner.

5. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. Considering the facts and circumstances, there is shall be no costs.

24.8.04 (JAYANT PATEL,J)